

Appl. No.: 09/438,957
Amdt. dated 03/15/2005
Reply to Office action of December 27, 2004

REMARKS

This amendment is filed in response to the Office Action dated December 27, 2004. Applicant first notes with appreciation, the Examiner's continued thorough examination of the application as evidenced by the Office Action. Applicant also notes with appreciation the courtesies extended by the Examiner to Applicant's counsel in a recent telephone interview. In response to the Office Action, Applicant has amended the claims in response to a 112 issue raised by the Examiner. Applicant submits that the claims, as presently presented, are patentable over the cited references. Therefore, Applicant respectfully requests reconsideration and allowance of the claims in light of the remarks presented below.

I. Summary of Rejections

The Office Action rejects all of the pending claims, namely Claims 1-9 and 23-34, as obvious in light of the combination of U.S. Patent No. 6,230,146 to Alaia and U.S. Patent No. 6,418,415 to Walker. Specifically, the Office Action alleges that the '146 Alaia patent discloses aggregating demand for an item from a user and the '415 Walker patent discloses aggregating requests from different users for one or more of the same items. The Office Action alleges that "to have provided aggregating requests for one or more of the same items disclosed by Alaia would have been obvious in light of Walker."

II. The Claims Are Definite

In the Advisory Action dated February 28, 2005, the Examiner raised issues with regard to the terms "different user" and "remote user" as recited in the claims. Applicant has amended the claims to replace all instances of "remote user" with the term "different user." Applicant respectfully submits that the claims as amended are definite. Applicant notes here that the claims were not amended in light of the prior art, but were amended only for purposes of clarification.

III. Claims 1-9 Are Patentable

Applicant respectfully submits that the Examiner's proposed combination overlooks a important element of the independent Claims 1, 2, 4, 5, 7, and 8, namely the recitation that aggregation of information for an item from different users is "independent of a commitment by the remote users to purchase the item." Every reference cited by the Examiner that relates to aggregation of information for an item from different users requires that the users be committed to purchase the item prior to aggregation.

Specifically, the '415 Walker patent clearly requires that the user commit to purchase when submitting the bid. The reference is replete, including even the title, with the requirement that the user commit to purchase prior to aggregation of the user's request with other users' requests. For example, in the abstract of the '415 Walker patent, it states that "the buyer is bound on behalf of the accepting seller."

In previous Office Actions, the Examiner has also cited U.S. Patent Number 6,260,024 to Shkedy, which discloses aggregation of requests from different users for an item. As pointed out in previous responses, the '024 Shkedy patent also requires that the user be committed to purchase prior to aggregation. For example, at col. 2, lines 52-58, the '024 Shkedy patent states that it is impossible to guarantee a price for the item if the consumer is not committed to purchase the item.

The Office Action's current combination fails to explain this problem with the art. It appears that the Office Action is picking and choosing which part of each reference to use in making the combination. Specifically, it appears that the Office Action wishes to combine the "aggregation of requests from multiple users" aspects of the '415 Walker and '024 Shkedy patents, with the "return of multiple pricing options" of the '146 Alaia patent. More specifically, the Office Action argues that such a combination would be obvious to one skilled in the art. Applicant respectfully disagrees with this contention.

There is nothing within the cited references to teach or suggest that a system for aggregating requests from different users could be implemented where the aggregation of different users' requests is performed "independent of a commitment by the remote users to purchase the item," as is recited in independent Claims 1, 2, 4, 5, 7, and 8. The '146 Alaia patent

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clearly does not disclose aggregation of different users' requests. The reference merely shows aggregation of different items, such as pencils and paper, all requested by only one user. Further, the '415 Walker and '024 Shkedy patents, which disclose aggregation of requests from different users, both specifically require commitments by the user prior to aggregation. The '146 Alaia patent does not deal with aggregation of request from various users, and thus, provides no teaching or suggestion of allowing the aggregation to occur independent of a commitment by the users to purchase, and the '415 Walker and '024 Shkedy patents specifically require a commitment before aggregation.

Applicant submits that it is not enough to say that two references can be combined. In order to sustain a *prima facie* case under § 2143 MPEP, it must be shown that the combination meets each element of the claim. In this regard, the two cited references do not teach or suggest aggregation of different users' requests is performed "independent of a commitment by the remote users to purchase the item." The '415 Walker and '024 Shkedy patents specifically require a commitment before aggregation, and as such, if the references were combined, the combination would also require such a commitment, as there is no teaching or suggestion contrary to this requirement in the '415 Walker and '024 Shkedy patents. Therefore, the combination would not meet the claims.

In light of the above, Applicant respectfully submits that Claims 1-9 are patentable.

II. Independent Claims 29-31 Are Patentable

Independent Claims 29-31 recite that the users are provided with at least two responses from which to choose from. Applicant submits that this is not taught or suggested by the cited combination. Specifically, as discussed above, the cited combination requires that the user be committed to purchase of the item prior to the system attempting to aggregate and get a bid. As such, the combination would not provide the consumer with two or more responses to choose between. The combination will only provide one bid, which the user must accept. If it provided two separate results, the user would not be committed to acceptance of one result, as the user could select between the results. This is inconsistent with a commitment to purchase, as is required in both the '415 Walker and '024 Shkedy patents.

III. Independent Claims 32-34 Are Patentable

Independent Claims 32-34 recite that the system attempts to get bids for an order independent of setting a maximum price and receives bids from suppliers, where the price set by the supplier for the item is independent of maximum price set by the consumer. The system of Claims 32-34 is advantageous in that it allows the consumer to check pricing for the request without having to first commit to a maximum price. Specifically, under the prior art systems, the consumer must input a maximum price at the outset. This is some ways may tip the consumer's hand. Specifically, the supplier is then aware of the consumer's maximum price and may seek to set their price just below or at the maximum price, even though the seller may have been willing to sell the item for less. Further, by not requiring a maximum price, the consumer may have access to price quotes from sellers that are above a maximum value that the consumer would have set. For example, under the conventional system, a consumer will not see an offering from a seller that may only be a couple of dollars higher than the maximum bid, which the consumer may have considered if she/he had known about the offer. Under the claimed system, the consumer can see all bids and make a decision based on the knowledge of all bids.

Applicant respectfully submits that none of the cited references, taken either individually, or in combination, teaches or suggests the following recitations of the Claims 32-34:

providing aggregated information to a plurality of suppliers, each capable of supplying the item without also providing remote user identification information from the request, wherein said providing step provides the aggregated information to the suppliers independent of any predetermined maximum price for the items;

receiving at least one proposed response from at least one of the suppliers, including a proposal for providing the item to the remote user, wherein a proposed price for the items is set by the supplier and independent of any predetermined maximum price; and

providing the proposed response to the remote user based on the remote user identification information, whereby the remote user can determine whether to commit to purchasing the item based at least on the price set by the supplier.

In this regard, the '415 Walker and '024 Shkedy patents require that the consumer accept a maximum offer price before the consumer is entered into the pool. Nowhere do these references teach or suggest that the consumer can be entered into the pool without accepting the

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maximum offer price. Further, nowhere do the references teach or suggest providing the aggregated consumer requests to supplier independent of a maximum price, setting of price by supplier independent of a maximum price, and committal of the buyer based on price offered by seller. As such, Applicant respectfully submits that Claims 32-34 are patentable.

CONCLUSION

In view of the amended claims and the remarks presented above, it is respectfully submitted that all of the present claims of the application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



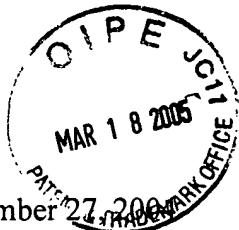
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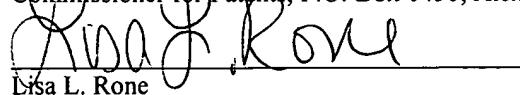
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